Central Station
Alarm Association

ALARM INDUSTRY COMMUNICATIONS COMMITTEE
POLITICAL ACTION COMMITTEE

EX PARTE OR LATE FILED

January 31, 1997

via Hand Delivery

Mr. Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

Re: CC Docket No. 96-152

Dear Chairman Hundt:

The Commission currently is considering a rulemaking concerning Section 275 of the Telecommunications Act of 1996, the provision pertaining to alarm monitoring services. As executives in the alarm monitoring industry, we wish to emphasize that this rulemaking is of extreme importance to the future of our business. Moreover, we are especially concerned that some Bell Operating Companies, through a creative interpretation of the statute, believe they can circumvent the intent of Congress and avoid the five-year transitional period on Bell entry into alarm monitoring services. We are similarly disturbed by the notion that the one grandfathered Bell, Ameritech, also is seeking to subvert the ban on its growth by acquisition.

Section 275 has two clear and simple purposes. First, Subsection (a)(1) bans six of the seven Regional Bell Operating Companies from engaging in the provision of alarm monitoring services for five years. This prohibition was included because, so long as the RBOCs retain their local monopolies, they possess the ability to engage in anticompetitive conduct in the alarm monitoring business. By excluding the RBOCs from this activity, Congress eliminated RBOC incentives to discriminate and cross-subsidize. Structural separation and other safeguards were not included in Section 275 because anything less than a flat prohibition was deemed inadequate. The ban expires in five years because, by that time, Congress expects vigorous local competition to have removed the RBOCs' ability to compete unfairly.

The second fundamental purpose of Section 275 is found in Subsection (a)(2). Here, Congress sought to address the fact that Ameritech already had entered the alarm monitoring

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business prior to passage of the '96 Act. Not wanting to order Ameritech to divest its pre-existing operations, but at the same time seeking to blunt Ameritech's unfair competitive advantages, Congress allowed Ameritech to retain its then-existing alarm monitoring business, but forbade it during the five year RBOC ban from acquiring other alarm monitoring companies. The only exception to this is a clause permitting Ameritech to exchange customer accounts with other alarm monitoring companies. In addition to aiding in the prevention of anticompetitive conduct, this compromise ensures that Ameritech is not given free rein to purchase a dominant position in alarm monitoring services while the other RBOCs remain barred from the marketplace entirely.

When Sections 275(a)(1) and (a)(2) are read in their entirety, and in the clear context of the '96 Act, the accuracy of the above characterizations of their meaning and intent is indisputable. In our view, there is little difficulty in discerning the plain meaning of Section 275.

By seizing on strained readings of specific words, however, Ameritech and SBC Communications are seeking to subvert Section 275 and render it meaningless. If permitted by the Commission to persist in their tortured readings of the '96 Act, these two RBOCs will have succeeded in thwarting the clear will of Congress and, in the process, will gain all the incentives and unfair opportunities which Section 275 intends to prevent.

For its part, Ameritech advances the absurd view that Section 275(a)(2) is meant not to bar it from acquiring alarm monitoring businesses for five years, but merely to require that it direct its lawyers to structure all such purchases as asset deals rather than stock transfers during that period. The basis for this contention is the use of the word "entity" in Section 275(a)(2); Ameritech argues that "entity" means a corporation or other legal person and thus excludes purchases of assets (*e.g.*, equipment, customer accounts, employees) where control of a corporation or partnership is not passed. Ameritech is completely lacking, however, for a coherent public policy explanation as to why, in the midst of drafting a 111-page broad reform of the telecommunications industry, Congress paused to delve into the minutiae of Ameritech's legal structuring of its acquisitions. Or why, during the next five years, Congress would permit it to purchase the *assets*, but not the *stock*, of every alarm monitoring company in the U.S. Obviously, the word "entity" in Section 275(a)(2) is meant to include any "object," "item" or "thing"; it is not limited to legal persons such as corporations or partnerships.

Similarly, Ameritech's contention that Subsection 275(a)(2) is meant to permit friendly acquisitions, but bar hostile ones, is without either merit or support. Neither the legislative history nor any public interest rationale have been provided to demonstrate that Subsection 275(a)(2) means to distinguish between friendly and hostile acquisitions. And the competitive and equitable concerns which motivated the passage of Section 275 are raised equally by either type of purchase.

Moreover, Ameritech's attempts to rely on other, completely unrelated statutes which expressly bar asset purchases stretches standards of legislative construction past the breaking point. It is beyond credulity to contend, as Ameritech does, that express use of the term "assets" in another, unrelated statute sheds any light on Congress' intent in enacting Subsection 275(a)(2).

Again, Ameritech cannot explain the public interest rationale behind barring stock purchases, but permitting asset acquisitions.

Even more extreme is Ameritech's explanation of the exception in Subsection (a)(2) for customer exchanges. This, according to Ameritech, is Congress' way of helping it avoid paying taxes on certain transactions. Again, Ameritech has no plausible basis for claiming (a) that Congress has any interest in assisting it in tax avoidance schemes, or (b) that the provision is anything other than a very limited exception to the five-year ban on growth by acquisition. Certainly, the Congressional committees with jurisdiction over tax matters would be surprised that such a tax measure was enacted without their review.

While Ameritech seeks to nullify Subsection (a)(2), SBC Communications proposes to repeal Subsection (a)(1). SBC originally contended that it would not be engaged in the "provision of" alarm monitoring services if it (1) marketed alarm monitoring service, (2) served as the sole customer sales contact, (3) billed alarm monitoring customers on SBC's telephone bill, (4) in the name of "SWBT Security Service," (5) in a single bundled charge including SBC-supplied equipment, and (6) shared in the alarm monitoring revenues on a monthly percentage basis. In this original form, SBC essentially contended that it could perform every aspect of alarm monitoring so long as its sales force obtained a separate monitoring contract and another company actually operated the alarm monitoring center. Obviously, if permitted, this resale approach would create an immediate public perception that SBC is in the alarm monitoring business and would give rise to all the economic incentives and anticompetitive opportunities which the five-year prohibition seeks to eliminate.

In response to challenges to its attempt to evade Subsection 275(a)(1), SBC has sought to initiate a form of negotiation with the Commission. Through *ex parte* meetings and filings, SBC has proposed minor changes in its plan, such as billing for the alarm monitoring services as a separate line item on the telephone bill. Nowhere, however, has SBC suggested it would (1) market for all alarm monitoring service providers without discrimination, or (2) avoid the incentives for cross-subsidization and discrimination which are inextricably linked to its receipt of a portion of the alarm monitoring revenues. So long as those factors are present, SBC has an interest in the consumer's choice of alarm monitoring providers which puts it squarely "in the provision of" prohibited services. There is no doubt that if SBC proposed today to market the interLATA services of a particular IXC to its in-region local customers and receive a percentage of the revenues in return, it would be found to be engaging "in the provision of" services which violate Section 271. The prohibition on alarm monitoring services in Subsection 275(a)(1) is no different.

The alarm monitoring industry consists of 14,000 providers, a few large and most small. After the expenditure of much effort and expense, they persuaded Congress to enact Section 275(a)(1) and (2) to prevent anticompetitive RBOC acts for five years. The plain, common sense meaning of those provisions is beyond doubt. Despite that outcome, Ameritech and SBC have now forced the industry to expend further time, energy and money opposing their efforts to persuade the FCC to ignore the will of Congress and rewrite the '96 Act. It is imperative that

the Commission resist the RBOC efforts to persuade it to permit them to enter where Congress forbade them to go.

Sincerely,

THE ALARM INDUSTRY COMMUNICATIONS COMMITTEE

By: /s/ Lou Fiore
Lou Fiore
Chairman

ALARM DETECTION SYSTEMS, INC.

By: /s/ Bob Bonifas
Bob Bonifas
President

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AMERICAN ALARM AND COMMUNICATIONS, INC.

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THE NATIONAL BURGLAR AND FIRE ALARM ASSOCIATION

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